

1 **ROBERTSON & VICK, LLP**
Alexander Robertson, IV (NV Bar No. 8642)
2 Jennifer L. Taylor (NV Bar No. 5798)
401 North Buffalo Drive, Suite 202
3 Las Vegas, Nevada 89145
Telephone: (702) 247-4661
4 Facsimile: (702) 247-6227
arobertson@rvcdlaw.com
5 jtaylor@rvcdlaw.com

6 **GREBEN & ASSOCIATES**
Jan Adam Greben (CA Bar No. 103464)
7 Admitted *Pro Hac Vice*
1332 Anacapa Street, Suite 110
8 Santa Barbara, CA 93101
Telephone: (805) 963-9090
9 Facsimile: (805) 963-9098
jan@grebenlaw.com

10 Attorneys for Plaintiffs

11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 PETER J. VOGGENTHALER; et al.

15 Plaintiffs,

16 vs.

17 MARYLAND SQUARE, LLC; et al.

18 Defendants.

) CASE NO. 2:08-cv-01618 RCJ (GWF)

) **PERMANENT**
) **INJUNCTION GOVERNING THE**
) **CLEAN UP OF HAZARDOUS**
) **SUBSTANCES AT AND EMANATING**
) **FROM MARYLAND SQUARE**
) **SHOPPING CENTER**

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
DEC 27 2010	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY:	DEPUTY

SUMMARY OF CONTENTS

	Page
I. Introduction	1
II. Definitions	1
III. Injunction to Undertake Mitigation and Corrective Actions	2
IV. Performance of Work	4
V. Compliance With Applicable Laws	5
VI. Record Retention	5
VII. Extension Requests	5
VIII. Incorporation of Plans, Schedules and Reports	5
IX. Calendar of Tasks and Schedules	5
X. Dispute Resolution and Continuing Jurisdiction of the Court	6
XI. Participation of Plaintiffs	6
XII. Deliverables	6
XIII. Effective Date	7

1 **I. INTRODUCTION**

2 The Court hereby issues the following Injunction Governing the Cleanup of the
3 Hazardous Substance Contamination at and Emanating from the Maryland Square Shopping
4 Center ("Injunction").

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED PURSUANT TO
6 FEDERAL RULE OF CIVIL PROCEDURE 65 THAT:

7 **II. DEFINITIONS**

8 Whenever the following terms are used in this Injunction, together with all documents
9 appended hereto, the following meanings shall apply:

- 10 A. "Corrective Action" means a permanent remedy to prevent a hazardous substance
11 or waste from posing a threat or potential threat to public health or the
12 environment (Nevada Administrative Code [NAC] 445A.2262).
- 13 B. "Defendants" shall mean (1) Maryland Square, LLC; (2) Maryland Square
14 Shopping Center Limited Liability Company; (3) Herman Kishner, dba Maryland
15 Square Shopping Center; and (4) Irwin Kishner, Jerry Engel, and Bank of
16 America as Trustees for the Herman Kishner Trust; (5) Shapiro Brothers.
17 Investment Co.
- 18 C. "Deliverable" shall mean, without limitation, any work plan, report, progress
19 report, plan, data, document, information, or submittal, which the Defendants are
20 required to submit to the Nevada Division of Environmental Protection (NDEP).
- 21 D. "Hazardous Substance" shall have the same meanings as set for the in
22 Comprehensive Environmental Response, Compensation and Liability Act
23 (CERCLA) 101(14), 42 U.S.C. 9601(14), including without limitation,
24 tetrachloroethylene (PCE), trichloroethylene (TCE), cis-1,2-dichloroethylene, and
25 chloroethene (also referred to as vinyl chloride), and shall specifically include all
26 materials meeting either the definition of "Hazardous Waste" or "Solid Waste" set
27 forth in federal Resource Conservation and Recovery Act (RCRA) statutory
28 definitions at 1003(5) and (27), 42 U.S.C. 6903(5) and (27), respectively. In

1 addition, "Hazardous Substance" includes, without limitation, hazardous waste
2 (Nevada Revised Statutes [NRS] 459.430), a pollutant (NRS 445A.400) and a
3 contaminant (NRS 445A.325).

4 E. "Interim-Action Level" means NDEP's Interim-Action Level for PCE vapors in
5 residential indoor air, which was based on a 10^{-4} incremental risk, per U.S.
6 Environmental Protection Agency's 2004 Preliminary Remediation Goals (PRGs).

7 F. "National Contingency Plan" or "NCP" shall mean 40 C.F.R., Part 300.

8 G. "NAC" means the Nevada Administrative Code.

9 H. "NDEP" shall mean the Nevada Division of Environmental Protection of the
10 Nevada Department of Conservation and Natural Resources.

11 I. "NRS" means the Nevada Revised Statutes.

12 J. "Property" shall mean the property and location of the former Al Phillips the
13 Cleaner (APTC) dry cleaning business located at 3661 S. Maryland Parkway in
14 the Las Vegas, Nevada, which is or has been owned by the Defendants.

15 K. "Remediation Standard" means the level of concentration of a hazardous
16 substance, hazardous material or a regulated substance in soil, groundwater or
17 surface water which Corrective Action is designed to achieve. The final
18 remediation standards may be adjusted based on site-specific factors, site-specific
19 calculated risk estimations, and background (i.e., ambient) conditions.

20 L. "Site" shall mean the Property and any area or media where Hazardous
21 Substances released at or from the Property have come to be located, including
22 any area where Hazardous Substances released at or from the Property have
23 commingled with Hazardous Substances from other sites.

24 M. "Work" shall mean all activities prescribed by, or required to be performed
25 pursuant to this Injunction. All documents required to be submitted to NDEP as
26 part of this Work, as well as any required response by NDEP, shall be filed with
27 the Court.
28

1 **III. INJUNCTION TO UNDERTAKE MITIGATION AND CORRECTIVE ACTIONS**

2 The Defendants are enjoined to and shall, jointly and severally, participate in this
3 Injunction governing the performance of Work at the Site, as required in this Injunction. No
4 actions shall be taken without review and approval by NDEP.

5 A. MITIGATION OF INDOOR AIR AND WELL WATER. At a minimum the
6 following actions shall be implemented pursuant to this Injunction:

- 7 1. Work Plan for Mitigation of Indoor Air and Well Water. Within sixty
8 (60) days of the effective date of this Injunction, the Defendants shall
9 submit a Work Plan for the implementation of actions necessary to control,
10 mitigate and abate the threats to human health via the vapor intrusion
11 pathway. Implementation of the Work Plan shall begin no later than thirty
12 (30) days after approval of the Work Plan by NDEP.
 - 13 a. To provide indoor air sampling, at least annually and to be initiated
14 following the time-table specified in III.A.1., for homes in the
15 neighborhood that overlie the area of elevated PCE concentrations
16 in groundwater, as defined by the 100 micrograms per liter ($\mu\text{g/L}$)
17 boundary of the plume. Resampling shall be in accordance with
18 the schedule and work plans as approved by NDEP.
 - 19 b. Design, install and test the efficacy of additional subslab
20 depressurization (SSD) systems if indoor air samples collected
21 from unmitigated homes that are found to contain PCE vapors at
22 concentrations that exceed NDEP's Interim-Action Level.
 - 23 c. Maintain and monitor existing SSD systems until Remediation
24 Standards for PCE in groundwater and indoor air have been met.
 - 25 d. Define the downgradient extent of the Site groundwater plume
26 containing more than 5 $\mu\text{g/L}$ of PCE, identify any domestic wells
27 within this plume, and take appropriate action to assure that the
28 drinking water standards for PCE and its degradation products are

not exceeded in these water supply wells. Initiation of Work toward delineating the plume to 5 µg/L shall begin no later than **thirty (30) days** after approval of the Work Plan by NDEP.

B. REMEDATION OF SOURCE AREA SOILS. The Defendants shall submit to NDEP for review and approval:

1. Corrective Action Plan (CAP) for Source Area Soils located at the former Maryland Square Shopping Center. The cleanup goal for source area soils shall be based on protection of groundwater and human health, as determined by NDEP.

C. REMEDATION OF GROUNDWATER.

1. CAP for Groundwater and implementation schedule describing all activities necessary to complete the analysis of alternatives to remediate shallow groundwater, in order to address the indoor air pathway, to be submitted by the Defendants for review and approval by NDEP. Defendants shall implement the approved CAP for Groundwater in accordance with the approved schedule for the groundwater remedy.
2. Corrective Action Report. Defendants shall submit a draft Corrective Action Report for review in accordance with the approved implementation schedule. The draft Corrective Action Report shall provide the results of pilot studies, bench-scale studies, and/or treatability studies (i.e., detailed analysis of remedial alternatives) consistent with NAC 445A and NRS, and the NCP.
3. Proposed Plan. Defendants shall prepare and submit to NDEP and the Court, a Proposed Plan no later than **thirty (30) days** after approval of the RAS Report by NDEP and the Court. The Proposed Plan shall include a statement of reasons setting forth the basis for the remedial actions selected and the Remediation Standards for PCE in indoor air and groundwater.

1 4. Record of Decision (ROD). NDEP shall draft a ROD, which shall present
2 the selected remedial alternative for groundwater at the Site. This decision
3 shall be based upon the Administrative Record, NAC 445A.2271 and
4 445A.2273, and shall be in accordance with criteria listed in the NCP at 40
5 CFR 300.430(f).

6 5. Remedial Design/Remedial Action (RD/RA), Operation and Maintenance.
7 Defendants shall prepare RD/RA documents and submit to NDEP within
8 **one hundred twenty (120) days** of acceptance of the Proposed Plan, and
9 perform such actions in conformance with the remedy selected and set
10 forth in the ROD.

11 D. QUARTERLY GROUNDWATER MONITORING AND REPORTING. This
12 Work shall continue according to the schedule previously established in NDEP
13 letters.

14 E. COMMUNITY RELATIONS PLAN. Defendants shall prepare a Community
15 Relations Plan. Defendants shall work cooperatively with NDEP and Plaintiffs to
16 provide information updates on progress of mitigation and remediation efforts to
17 residents and other stakeholders, in cooperation with local government officials.

18 F. STATUS REPORTS. Defendants shall submit to the Court, NDEP and the
19 Plaintiffs, quarterly reports describing status of Work for the Site. Defendants also
20 shall promptly transmit these reports not later than **thirty (30) days** after the end
21 of the last month of the quarter, beginning with the fourth calendar quarter of
22 2010. Defendants may request, and NDEP may consider, modifications to the
23 frequency of reporting.

24 IV. **PERFORMANCE OF WORK**

25 A. MODIFICATION OF DELIVERABLES.

26 1. If Defendants modify any method or initiate new activities for which
27 necessary procedures or plans have been established, the Defendants shall
28 prepare an addendum to the approved Work Plan(s) for review and

comment by NDEP. NDEP shall have the option of accepting, rejecting, or modifying any Work completed incorporating unapproved modifications or deviations from the approved Work Plans.

2. If NDEP determines that modification to the Work specified in the Injunction and/or in other Deliverables developed pursuant to the Injunction is necessary, NDEP may require that such modification be incorporated in such Deliverables to the extent that it is consistent with future ROD(s).
3. If the Defendants or Plaintiffs object to any modification determined by NDEP to be necessary pursuant to this paragraph, they may seek dispute resolution by the Court pursuant to Section X (Dispute Resolution and Continuing Jurisdiction of the Court). Deliverables shall be modified in accordance with final resolution of the dispute. The Defendants shall proceed with all Work not the subject of Dispute Resolution.
4. Nothing in this paragraph shall be construed to limit NDEP's authority to require performance of further response actions as otherwise provided in this Injunction.
5. The Defendants shall continue to implement the Remedial Action(s) and maintain home mitigation systems until Remediation Standards are achieved, or as otherwise determined under NDEP's regulatory authority under NAC 445A.

V. COMPLIANCE WITH APPLICABLE LAWS

The Work shall comply with all applicable state, and local laws, regulations and guidelines, as amended, including but not limited to, NRS 445A, NRS 459 and, not inconsistent with the NCP.

///

///

///

1 **VI. RECORD RETENTION**

2 Copies of all documents shall be filed with the Court and submitted to NDEP in both hard
3 copy and electronic file formats. Non-privileged Deliverables and correspondence will be posted
4 on NDEP's website at: http://ndep.nv.gov/pce/maryland_square.htm.

5 **VII. EXTENSION REQUESTS**

6 If the Defendants are unable to perform any activity or submit any document within the
7 time required under this Injunction, that Defendants may, prior to expiration of the time, request
8 an extension of the time in writing to NDEP, with a copy to the Court. The extension request
9 shall include a justification for the delay. All such requests shall be in advance of the date on
10 which the activity or document is due.

11 **VIII. INCORPORATION OF PLANS, SCHEDULES AND REPORTS**

12 All plans, schedules, reports, specifications and other documents that are submitted by
13 Defendants pursuant to this Injunction are incorporated in this Injunction upon filing with the
14 Court and the appropriate review and approval by NDEP.

15 **IX. CALENDAR OF TASKS AND SCHEDULES**

16 This Section provides a listing and schedule of key Deliverables required by NDEP:

17 <u>Deliverable</u>	<u>Timeline</u>
18 A.1. Work Plan for Mitigation of Indoor Air	
19 and Well Water	Within 60 Days of this Injunction
20 B.1. CAP for Source Area Soil	September 13, 2010
21 C.1. CAP for Groundwater	October 11, 2010
22 C.2. Corrective Action Report	Within 180 days of approved
23	Groundwater CAP
24 C.3. Proposed Plan	Within 30 days of approval
25 C.4. ROD	(To be prepared by NDEP).
26 C.5. RD/RA Report	Within 120 days of approved
27	Proposed Plan
28 D. Quarterly Groundwater Monitoring and Reporting	As scheduled

- | | | |
|---|----------------------------------|---|
| 1 | E. Community Relations Plan | Within 60 days of this Injunction |
| 2 | F. Status Reports | Quarterly, beginning with 4th |
| 3 | | Quarter, 2010 |
| 4 | Initiation of Mitigation Actions | Within 30 days of approved work |
| 5 | | plan |
| 6 | Notice of Work | Notification within 5 days of |
| 7 | | knowledge of delay |
| 8 | Delay in Work | No later than 5 days prior to any field |
| 9 | | Work |

10 **X. DISPUTE RESOLUTION AND CONTINUING JURISDICTION OF THE COURT**

11 The Court shall retain full jurisdiction over this Injunction for purposes of ensuring
 12 compliance with its terms and provisions and adjudicating any dispute arising hereunder.

- 13 A. If the Defendants or Plaintiffs disagree with any decision or failure to make a
 14 decision by NDEP pursuant to this Injunction, they shall notify NDEP and the
 15 Court in writing of the dispute ("Notice of Dispute") within **thirty (30) days** of
 16 the decision or failure to make a decision.
- 17 B. The "Notice of Dispute" shall set forth the specific points of the dispute, the
 18 position the disputants claim should be adopted as consistent with the
 19 requirements of this Injunction, the basis for the position, any factual data,
 20 analysis or opinion supporting that position, any supporting documentation relied
 21 upon, and any information necessary for the Court's determination.
- 22 C. NDEP and the non-disputing party shall have **thirty (30) days** or such time set by
 23 the Court to respond. The Court's decision shall be incorporated into and become
 24 an enforceable element of this Injunction, and shall be considered the final
 25 decision.
- 26 D. Any party may petition the Court for review of the terms of this Injunctive Order,
 27 or review of its implementation.

XI. PARTICIPATION OF PLAINTIFFS

- A. All Deliverables submitted by the Defendants to NDEP and any response by NDEP shall be filed with the Court shall also be submitted to the Plaintiffs as specified in XII of this Injunctive Order.
- B. Plaintiffs may provide comments on all Deliverables to NDEP. NDEP commits to discuss all such comments with the Plaintiffs or provide an informal response; however, NDEP shall prepare a formal "Response to Comments" document only for selected Submittals. Such selected Submittals include the Proposed Plan for remediation of groundwater, as well as any other Submittals, as agreed to by both the Plaintiffs and NDEP.

XII. DELIVERABLES

All Deliverables and notifications from Defendants required by this Injunction shall be sent simultaneously to:

As to the State of Nevada:

William Frey, Sr. Deputy AG
Office of the Attorney General
100 N. Carson St.
Carson City, NV 89701

Mary A. Siders, Ph.D.
NDEP, Bureau of Corrective Actions
901 S. Stewart St., Ste 4001
Carson City, NV 89701

As to Plaintiffs:

Alexander Roberston, IV, Esq.
Robertson & Vick, Esq.
880 Hampshire Road, Suite B
Westlake Village, CA 91361

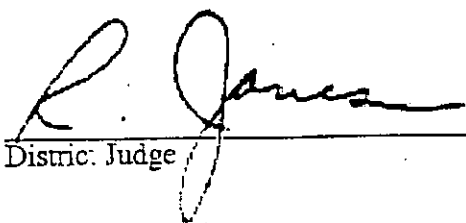
Jan Greben, Esq.
Greben & Associates
1332 Anacapa Street, Suite 110
Santa Barbara, CA 93101

XIII. EFFECTIVE DATE

This Injunction is effective after it is signed by the Court, entered by the Clerk, and served on NDEP, the Plaintiffs and the Defendants.

IT IS SO ORDERED.

Dated December 27, 2010



District Judge